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Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-92
)	
AJI BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
License for Station KYEG(FM),)	
Canadian, Texas, Should Not)	
Be Revoked)	

APPEARANCES

Frank R. Jazzo, Esquire and Andrew S. Kersting, Esquire on behalf of AJI Broadcasting, Inc. and Mark L. Berlin, Esquire and Robert Zauner, Esquire on behalf of the Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
EDWARD LUTON

Adopted: December 6, 1996

;

Released: December 12, 1996

I. PRELIMINARY STATEMENT

1. AJI is the licensee of Station KYEG(FM), Canadian, Texas. On April 16, 1996, the Mass Media Bureau ("Bureau") initiated a proceeding to determine whether the license for Station KYEG(FM) should be revoked. Order to Show Cause and Hearing Designation Order, DA 96-584 (released April 16, 1996)("HDO"). The HDO specified the following issues to be determined at the hearing:

- (1) To determine whether AJI Broadcasting, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRBG(FM), consistent with the Commission's Rules.
- (2) To determine whether AJI Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether AJI Broadcasting, Inc. is qualified to be and remain the licensee of KRBG(FM).

HDO at ¹/ The burden of proceeding and the burden of proof on the above issues was placed on the Bureau. Hearing sessions were held on July 30 and August 14, 1996. Proposed findings of fact and reply proposed findings were filed by the parties on September 24, 1996 and October 8, 1996, respectively.

II. FINDINGS OF FACT

2. On December 10, 1991, the Commission granted Megahype Broadcasting Partnership (AJI's predecessor in interest) a Special Temporary Authorization ("STA") for Station KYEG(FM) to be silent, after Megahype advised the Commission that, for financial reasons, it was forced to cease operations. (MMB Ex. 1, Attach. 1).

3. On August 31, 1992, the Commission granted an application to assign the license of KYEG(FM) to Carolina Communications, but Carolina was unable to return the station to the air. On September 21, 1994, Carolina filed an application to assign the station's license to AJI and that application was granted on December 20, 1994. The grant was subject to the condition that broadcast operations be resumed within sixty days after the assignment was consummated. The assignment from Carolina Communications to AJI was consummated on February 21, 1995, but the station did not resume broadcast operations within sixty days thereafter.

4. By letter dated June 2, 1995, the Bureau advised AJI that the licensee had not complied with the condition requiring the resumption of broadcast operations and requested an explanation for the failure. The letter cautioned that actions would be taken jeopardizing the station's license and call sign if AJI did not respond within thirty days. (MMB Ex. 1 Attach. 2). When AJI did not respond to the June 2, 1995 letter, the Bureau sent a second and similar letter to AJI on July 17, 1995. (MMB Ex. 1, Attach. 2).

5. By letter dated July 20, 1995, AJI responded to the staff's July 17 letter. In its response, AJI requested an STA to allow the station to remain silent while an authorized facility upgrade was being completed. AJI stated that an extension was necessary due to the health problems of A. Jack Inman, the sole shareholder of the licensee. (MMB Ex. 1, Attach. 3) On August 23, 1995, the Bureau granted AJI's STA request and extended its authority to remain silent until October 1, 1995. (MMB Ex. 1, Attach. 3). AJI's July 20, 1995 STA request was its last contact with the Commission prior to the Commission's designation of AJI's license for hearing on April 12, 1996. (MMB Ex. 1). The STA request was granted on August 23, 1995.

6. Mr. Inman testified that upon examining the station's property following the February 21, 1995, consummation of the assignment to AJI, he found that all of the equipment

¹ On April 8, 1996, the Commission granted AJI's request to change the call sign of the Canadian, Texas, FM facility from KRBG(FM) to KYEG(FM). See Public Notice, No. 62421, (released April 12, 1996).

which had previously been on the site had been removed and there was no equipment available to return KYEG(FM) to the air.

7. Inman states that, after AJI acquired the license in February 1995, he relied on John Pittman of Lumberton, North Carolina, for funds to construct the station. (Tr. 81). According to Inman, he reached an oral understanding with Pittman for the provision of funds, but, before they could reduce that understanding to writing, Pittman was killed in an automobile accident on September 16, 1995. (Tr. 81; AJI Ex. 1). Inman then began to search for a new investor. (AJI Ex. 1). In January, 1996, AJI entered an agreement with Pampa Broadcasters of Pampa, Texas, to sell the station. Although Inman indicated that all of the necessary signatures of the parties were obtained, no assignment application was ever filed with the Commission. (AJI, Ex. 1).

8. During this period, AJI had a construction permit to construct the station at modified facilities. On April 1, 1996, the Bureau denied AJI's application for extension of time to construct at those facilities. In doing so, the staff rejected AJI's claims that Inman's health problems prevented construction of the facility. In that connection, the staff stated that AJI had not shown why the licensee could not have secured a contractor to proceed with the construction. The staff further found that there was a two-and-one-half month period of time, after Mr. Inman's doctor had pronounced him able to resume normal activities, that he did not make any progress. Consequently, the staff concluded that AJI had failed to show sustained progress in the construction of the station and had failed to demonstrate a firm commitment to construct. (MMB Ex. 1, Attach. 4).

9. After the failed attempt to assign the station's license to Pampa Broadcasters, AJI still remained in need of an investor to assist in the station's construction. With that in mind, in June 1996, Inman met with Dain Schult, the president of Texrock Radio, Inc., for the purpose of obtaining financing for the construction and start-up expenses of the station. (AJI, Ex. 1). On July 18, 1996, Schult sent a letter to Inman in which he stated that it was "TR's intent to assist you in funding the construction" of the station. (AJI Ex. 1, Attach 4). By letter dated July 29, 1996, Schult, stated that Texrock would loan AJI up to \$200,000 to construct the station and furnish it with initial operating funds. (AJI Ex. 1, Attach. 5). That letter also detailed the terms of the loan.

10. The July 29, 1996 letter, addressed to the presiding officer, describes Texrock and states its involvement as follows:

"Texrock Radio, Inc. ("TR") was formed as a Texas corporation in March, 1996. Among its goals are purchasing and operating stations in Texas, creating syndicated satellite programming and promotional services that can be sold to other stations in Texas and helping other independent broadcasters in building and operating radio stations in Texas. . . .

It is anticipated that TR would loan up to \$200,000 for the purposes of facility

construction and initial station operating funds."

Schult testified that Texrock did not have the funds on hand to make the proposed loan to AJI. (Tr. 93). Instead, Texrock was expecting funding from a third party, R.J. Financial, Incorporated, to enable Texrock to carry out its funding promise to AJI (AJI, Ex. 1, Attach.5). Schult described R.J. Financial as "a primary funding source" which "is in a position via its contact with trust funds to provide funding." (Tr. 95). The record contains no further description of R.J. Financial. There are no facts demonstrating its ability to assist Texrock. Nevertheless, according to Schult, the aggregate amount that R.J. Financial is providing to Texrock is \$21,340,000 (Tr. 96). Schult testified that R.J. Financial will make a series of incremental disbursements to Texrock. The first disbursement will be in the amount of \$500,000; in addition, another \$100,000, in the form of a loan, will be coming to Texrock from a Mr. Dan Hodges (described by Schult as an investment banker, based in Tucson, Arizona). Thus, with a total \$600,000, soon to be in hand, Schult expressed confidence that Texrock could easily loan AJI the envisioned \$200,000. (Tr. 95-98). Schult explained that the financial arrangement between Texrock and AJI is a part of Texrock's plan to acquire a group of radio stations. The \$21,340,000 Texrock expects from R.J. Financial will provide the capital necessary to help Mr. Inman with KYEG(FM) and enable Texrock to make deposits toward the purchase of other stations. (Tr. 98).

11. Mr. Inman states that he wants another opportunity to get KYEG(FM) on the air. (AJI Ex. 1). He testified that, while a transmitter has been ordered, no equipment necessary to construct the station has been delivered and no construction has begun. (Tr. 84-85). Inman testified that he has engaged RDG Custom Electronics to supply equipment and engineers, but admits that there is no written agreement with RDG that holds it to a schedule for constructing the station. Inman explained that he and RDG have worked together on several different station projects in the past and they have never had a written agreement. In any event, Inman says he will hire "someone else to do the job if [RDG] can't do the job." (Tr. 92).

III. CONCLUSIONS OF LAW

12. Station KYEG(FM) is presently off the air because of AJI's financial difficulties. AJI argues that it has entered an agreement with Texrock whereby Texrock has agreed to loan AJI up to \$200,000 for the construction and start-up expenses of the station. Although Texrock does not have the funds to make this proposed loan to AJI, Texrock has been promised loans from RJ Financial in the aggregate amount of \$21,340,000. The first loan disbursement is to be in the amount of \$500,000. Additionally, according to AJI, it has secured a "verbal commitment" from a Mr. Dan Hodges for an additional \$100,000 loan.

13. The Bureau concludes that AJI lacks the "financing necessary to effectuate its proposal" because Texrock does not possess the necessary funds to return KYEG(FM) to the air. The Bureau points out that Texrock has provided no letters of intent from third parties indicating their willingness to provide financing, and , thus, AJI cannot rely on Texrock to finance the construction of the station. AJI dismisses the Bureau's position as a "red herring" because:

"... it is based upon an issue which has not been designated in this proceeding.... no financial qualifications issue has been designated.... If the Bureau believed that [such an] issue was necessary [citation omitted], it should have taken the necessary steps to ensure that such an issue was included in the [HDO], rather than attempt to add this issue through the back door."

14. To the extent that any "financial qualifications issue" might be needed here, it is undoubtedly provided by the designated Issue (1), which requires a determination of the "capability," financial and otherwise, of the licensee to expeditiously resume station operations.

15. The Bureau's position goes to the heart of the matter. AJI is looking to Texrock for the necessary financing; Texrock, in turn, is looking to R.J. Financial, an entity which not only is said to exist, but also is said to have both the means and the intention to fund Texrock in the amount of \$21,340,000. R.J. Financial's ability to successfully carry that significant burden is supported on this record only by the bare assertion of Mr. Dain Schult that R.J. Financial "is in a position via its contact with trust funds to provide funding." (Tr. 95). That is not enough; Mr. Schult's assertion is altogether uninformative and proves nothing about the nature of R.J. Financial, its ability to make the supposed loans, or its intention to do so. No representative of R.J. Financial gave testimony in this proceeding; neither did Dan Hodges, a person claimed to be the source of a \$100,000 loan to Texrock. No writing supports Schult's claims regarding either of these supposed lenders. The unbusinesslike nature of what has been presented warrants disbelief and rejection of these claims. On the available evidence, it is concluded that Texrock lacks the ability to fund AJI's hoped for resumption of broadcast operations, and there is no reasonable prospect that AJI will expeditiously resume those operations. ^{2/}

16. Section 73.1740(a)(4) of the Commission's Rules provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C., not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it possible to comply within the allowed period, informal

² Even if financing had been secured, AJI's "expeditious resumption" of broadcast operations would still be in some doubt. Although it has been the licensee of KYEG(FM) for more than 20 months, AJI has yet to make any progress in the actual construction of the facility, and none of the equipment needed to put the station on the air has been delivered. While Mr. Inman claims that he has engaged RDG to furnish equipment and engineers to build the station, it is also true that no schedule for construction has been agreed upon. (Tr. 90-91).

written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

17. AJI acquired the license for KYEG(FM) on February 21, 1995. The station was silent at the time and the Commission granted the assignment of license to AJI upon the condition that broadcast operations be resumed within 60 days. Sixty days passed and the station remained silent. It was not until July 20, 1995, that AJI requested silence authority for the station. By then, AJI had already violated Section 73.1740 and the violation continued until August 23, 1995, when the Commission granted AJI's July 20, 1995 STA request.

18. The Commission's grant of that STA request authorized the station to remain silent until October 1, 1995. The station has continued to be silent to the present day and AJI has not sought any further silence authority. AJI presents nothing which excuses these violations of the rule. Even so, the transgressions seem not so egregious as to warrant revocation of the station's license.

19. Section 73.1750 of the Commission's Rules provides:

The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C., for cancellation.

20. AJI never intended to permanently discontinue the operations of the station. After AJI acquired the station license in February, 1995, Inman sought funding from a Mr. John Pittman. Pittman was killed in an automobile accident on September 1, 1995, before the funds could be provided. In January, 1996, Inman attempted to sell the station to Pampa Broadcasters. That effort failed and in June, 1996, Inman met with Mr. Dain Schult, the president of Texrock Radio, for the purpose of obtaining financing for the construction and start-up expenses of the station. On these facts, no violation of Section 73.1750 will be found.

IV. ULTIMATE CONCLUSIONS

21. The ultimate issue for decision is whether, on the basis of the evidence adduced, AJI's license to operate KEYG(FM) should be revoked. It is concluded that AJI lacks the capability to expeditiously return KEYG(FM) to the air, and is not qualified to be the licensee.

22. Accordingly, the Mass Media Bureau having carried its burden of showing that the license for Station KEYG(FM) should be revoked, IT IS ORDERED THAT THAT

License IS REVOKED. ^{3/}

FEDERAL COMMUNICATIONS COMMISSION


Edward Luton
Administrative Law Judge

³ In the event exceptions are not filed within (30) days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective fifty (50) days after its release pursuant to Section 1.276(d) of the Commission's Rules.